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7 JOHN C. PHELAN,  
8 Plaintiff,  
9 v.  
10 LIFEWAY FOODS, INC.,  
11 Defendant.

Case No. 12-cv-01309-JST

**ORDER RE: VOLUNTARY DISMISSAL**

Re: Dkt. No. 49

12 Before the Court is Plaintiff John Phelan's "Notice" of Voluntary Dismissal Without  
13 Prejudice, Dkt. No. 49 (March 19, 2013).

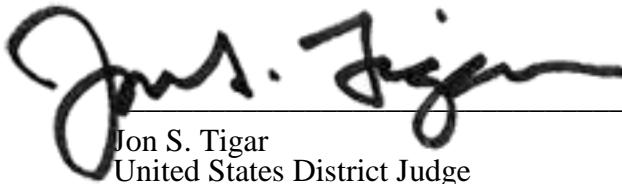
14 Federal Rule of Civil Procedure 41(a)(1)(A)(i) permits Plaintiff to voluntarily dismiss his  
15 case without an order of this Court only if the notice is filed "before the opposing party serves  
16 either an answer or a motion for summary judgment." Defendant's Answer was filed on January  
17 11, 2013. That rule, cited in Plaintiff's "Notice," therefore does not apply.

18 Rule 41(a)(1)(A)(ii) provides Plaintiff the alternative of filing a stipulation of dismissal  
19 signed by all parties who have appeared. Plaintiff's filing is signed only by his counsel. That rule  
20 also does not apply.

21 Consequently, Plaintiff's "Notice" of voluntary dismissal had no effect and Plaintiff's  
22 claims were not dismissed. Good cause appearing, the Court hereby vacates the case management  
23 conference currently scheduled for Wednesday, March 20, 2013. The Court will hold a case  
24 management conference in this matter on May 1, 2013, at 2:00 p.m.

25 **IT IS SO ORDERED.**

26 Dated: March 19, 2013

  
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28 Jon S. Tigar  
United States District Judge